

SUPREME COURT OF FLORIDA

CASE NO.: SC12-2495

**INQUIRY CONCERNING A JUDGE,
NO. 11-550**

RE: JUDITH W. HAWKINS

**COMMISSION'S REPLY IN OPPOSITION
TO RESPONDENT'S MOTION FOR REHEARING**

COMES NOW the Florida Judicial Qualifications Commission ("JQC"), by and through undersigned special counsel, and hereby files Commission's Reply in Opposition to Respondent's Motion for Rehearing, and states as follows:

MEMORANDUM OF LAW

Fla. R. App. P. 9.330 governs motions for rehearing. The Rule expressly provides: "A motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the movant, *the court* has overlooked or misapprehended in its decision, *and shall not present issues not previously raised in the proceeding.*" *Id.* (emphasis added). As plainly noted by the 5th District Court of Appeal, "we do not view the privilege to seek a rehearing . . . as an open invitation for an unhappy litigant to reargue the same points previously presented, or to discuss the bottomless depth of the displeasure that one might one might feel toward this judicial body" after losing on appeal. *Ayala v. Gonzalez*, 984 So. 2d 523, 526 (Fla. 5th DCA 2008); *accord, Marion v. Orlando Pain & Med. Rehab.*, 67 So. 3d 264, 265 (Fla. 5th DCA 2011); *Lowry v. State*, 963 So. 2d 321, 328 (Fla. 5th

DCA 2007); *Banderas v. Advance Petroleum, Inc.*, 718 So. 2d 376, 377 (Fla. 3d DCA 1998); *Goter v. Brown*, 683 So. 2d 155, 158 (Fla. 4th DCA 1996); *Elliott v. Elliott*, 648 So. 2d 135, 136 (Fla. 4th DCA 1994); *Lawyers Title Ins. Corp. v. Reitzes*, 631 So. 2d 1100, 1101 (Fla. 4th DCA 1994).

ARGUMENT

In her motion for rehearing, Respondent alleges that this Court has overlooked information material to its determination to remove her from judicial office. In doing so, Respondent not only fails to establish a legal basis for rehearing, she also confirms the appropriateness of the Court's decision. Respondent's motion should be denied.

Respondent first argues that the Court "failed to address" the fact that she had corrected the "oversights" in establishing her for profit business by voluntarily paying her taxes and incorporating her business "in a timely manner." The Respondent's failure to pay her taxes and register her business for nearly three years (Findings of Facts, p. 12) is in no way timely.

Respondent suggests that the Court failed to appreciate the fact that it only took her two months to provide the JQC with the discovery she had been repeatedly ordered to produce. As the Court found, Respondent willfully refused to comply with this lawful exercise of legal process, saying: "Why would you expect me to give you the information to investigate me?" (Court's Opinion p. 30)

Respondent's production of documents eight weeks later, does nothing to alter the conclusion that she "sought to frustrate the discovery of materials relevant to the investigation." (Court's Opinion, P. 31)

Respondent next challenges the Court's finding that she had deleted "Gaza Road Ministries' financial data in the early morning hours of the day of her deposition after that data had been subpoenaed." (Court's Opinion, p. 29) Respondent claims "there was never evidence presented which would indicate" that her business laptop contained financial data. Respondent's own sworn deposition testimony confirms the correctness of the Court's conclusion:

A. [I] deleted whatever financial information had been put into the Quicken program, and I did that this morning.

Q. Did any of the deleted materials relate at all to your non-judicial income?

A. It would be the [ABC] income.

Q. And you deleted that?

A. I most certainly did.

Q. And you are refusing to produce that?

A. I most certainly am.

(Findings of Facts, p. 19)

Respondent also quarrels with the Court's finding that she made deceitful statements concerning her possession of computer storage devices. The forensic

examiner who examined Respondent's computers asked Respondent if she had any USB flash drives. (Findings of Facts, p. 23) Respondent replied that she did not. (Findings of Facts, p. 23) At the hearing before the Investigative Panel, Respondent denied she made such a statement. (Findings of Facts, p. 23; Final Hr'g Tr. p. 606) (Respondent: "I never, ever denied having thumb drives.") The Respondent now attempts to re-litigate this issue, by suggesting that what she really meant was that she "did not have any flash drives to surrender *on the day they came to image the computers.*" (Respondent's Motion, p. 3) This claim is not a proper subject of a motion for rehearing. Rehearing is not a forum for expressing disagreement with the court's decision. *See Whipple v. State*, 431 So. 2d 1011, 1013 (Fla. 2d D.C.A. 1983).

Respondent also attempts to re-litigate whether she kept lists of customers to whom she sold her books. (Respondent's Motion, p. 4) Nothing in her arguments undermines the Court's finding that Respondent violated her obligation to comply with the law, as her own testimony demonstrates. When asked for a list of purchasers, Respondent replied, "You're the one who said that I sold the books. Surely you should have gone around and figured out who I sold them to." (Opinion, p. 30)

Respondent asserts that the Court erred in finding she failed to accept responsibility for her misconduct, because the Court overlooked her willingness to

accept a ninety-day suspension and other sanctions. The error is the Respondent's. Acquiescence to a penalty is not the same as acceptance of responsibility. Confronted with the specter of removal, Respondent offered a general apology. She has never acknowledged or taken responsibility for her actions or for her disregard of the laws and rules of procedure that are the foundation of the legal system.

CONCLUSION

Respondent's Motion goes far beyond the stringent limitations on rehearing motions by re-presenting matters heard and considered by the Hearing Panel, reviewed by the Court, and addressed in the Court's Opinion following its detailed review of the findings, conclusions, and recommendations of the Hearing Panel. Respondent should not be allowed to resume on rehearing the battle she lost in the Court's Opinion. She still fails to recognize that a judge who neither respects nor complies with the law cannot secure the public confidence necessary to effectively discharge her responsibilities to any litigant. The Respondent's Motion for Rehearing should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and Electronic Mail, this 24th day of November, 2014, to:

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